

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.3 MiscLaborServices	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a limited liability corporation providing construction services to the general public which engaged the worker as a helper assistant from January 2009 to December 2009. There was no written agreement between the parties.

The worker received verbal instructions regarding the services to be performed. She worked Monday to Friday, from 7:00 AM to 3:30 PM. The firm's supervisor determined the methods by which the assignments were performed. She performed the services on the premises of the firm's customers. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker worked exclusively for the firm.

The worker did not furnish any of the tools or equipment used in performing the services, except for her labor. The worker did not lease equipment. The firm determined the fees to be charged to its customers. The worker was paid an hourly wage. The firm's customers paid the firm. The firm's foreman determined the worker's territory. Orders were submitted to the firm for approval. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. She did not advertise her services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. In this case, the worker not only did not advertise her services, but she completed an application for a job. She was required to perform the services under the name of the firm and for the firm's clients.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's customer's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she completed an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.